

It was alleged in the libel that the product was misbranded in violation of section 8 of the Food and Drugs Act and the first paragraph of said section; and also misbranded in violation of paragraphs 2 and 4 of said section 8 in the case of food in said act; and investigation and inspection of the factory of said firm at Kelleys Island by inspectors of the Department of Agriculture revealed the fact that all port wines marketed by them were manufactured in their establishment and that in the preparation and manufacture of said product prunes were used, the product thus being of domestic origin, and the shipment being labeled "Port" without any qualifying terms showing that said product was manufactured in Ohio; said product was thus labeled and branded so as to deceive and mislead the purchaser and to purport to be a foreign product when it was not so, and was further misbranded in that the statement contained on the label thereof was false and misleading regarding the ingredients and substances contained therein.

On February 1, 1913, the said Schaedler & Rhein, claimants, having consented thereto, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be surrendered to said claimants upon payment of the costs of the proceedings and the execution of bond in the sum of \$500 in conformity with section 10 of the act.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

2978. Misbranding of tomatoes. U. S. v. 1,200 Cases of Tomatoes. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 4822. S. No. 1582.)

On November 19, 1912, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1,200 cases, each containing 2 dozen cans of tomatoes, remaining unsold in the original unbroken packages and in possession of G. E. Howard & Co., Newburg, New York, alleging that the product had been shipped on or about August 26, 1912, by the New Hartford Canning Co. (Ltd.), from Centerville, Md., and transported from the State of Maryland into the State of New York, and charging misbranding in violation of the Food and Drugs Act. The cases were labeled: "2 doz. Mohawk Valley Tomatoes packed by New Hartford Canning Company, New Hartford, N. Y." The cans were labeled: "Mohawk Valley brand tomatoes New Hartford Canning Company, Ltd., contents two pounds. New Hartford Canning Company, New Hartford, Oneida County, New York. Guaranteed by New Hartford Canning Company, serial Number 9809."

Misbranding of the product was alleged in the libel for the reason that it was falsely branded as to the State in which it was produced; that is to say, it bore a label which represented that it was produced and manufactured in the State of New York, whereas in truth and in fact it was produced and manufactured in the State of Maryland. Misbranding was alleged for the further reason that the packages containing the product bore a statement which was false and misleading in that it represented the article to be tomatoes grown and packed in the State of New York, whereas in truth and in fact said article was tomatoes grown and packed in the State of Maryland.

On December 5, 1912, the said New Hartford Canning Co., claimant, a corporation organized and existing under the laws of the State of New York, having made its claim and stipulation for the costs and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered that the product should be redelivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of \$2,400, in conformity with section 10 of the act.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*